(b), (c) and (d) of the same sub-section were fulfilled.

The first ground of appeal was that in default of such evidence the presumption under section 19 of the said Ordinance cannot arise. I agree with this submission. That presumption can arise only when premises have been entered *under the Ordinance*. Before the presumption can arise there must be proof of how the entry was made. *Regina v. Tan Yok Lan & Ors.*[1] is authority for this proposition — see also Indian cases referred to in *Braddell's Common Gaming Houses* at pages 41 and 42.

But the mere fact that there is no evidence of entry "under the Ordjnance" does not prevent evidence of the finding of instruments or appliances of gaming found therein being given and a conviction being obtained; the absence of such evidence only prevents the presumption that a house is a gaming house arising so that the onus of proving this by evidence remains on the prosecution.

Now by statutory definition (section 2(1) of the Ordinance) the expression "instruments and appliances for gaming" includes all articles which are used in or for the purpose of gaming or a lottery, and there is no doubt therefore that the documents which are exhibits in this case and which have been proved to relate to 100, 1,000 and 10,000 characters lotteries are "instruments and appliances for gaming." But the fact that "instruments and appliances for gaming" are found in a place is not sufficient by itself to make that place a common gaming house. Under sub-section (1) of section 2 of the Ordinance, the expression "common gaming house" includes "any place kept or used for the purposes of a public lottery" and under the same sub-section "a place in which lottery tickets are offered for sale, sold or distributed shall be deemed to be 'used for the purpose of a public lottery' ". The learned Deputy Public Prosecutor submitted that the latter definition is not exhaustive and that a place is to be deemed to be "used for the purpose of a public lottery" not only when lottery tickets are "offered for sale" or "sold" or "distributed" but also when anything else connected with a public lottery is done in such place. I do not agree with this submission; it is clear from that definition that it is only in the case therein specified that a place is to be deemed to be "used for the purpose of a public lottery"; this becomes clearer still when the phrase "used for the purpose of a public lottery" is related to the definition of "common gaming house", which is the only context in which that phrase appears. As Sir Roland Braddell points out in his "*Common Gaming Houses*" at page 7 :—

> "The mischief of a common gaming house is the same as that of any public nuisance of a like nature, namely, that it is a great temptation to idleness and apt to draw together great numbers of disorderly persons. The essential element of the offence is the public scandal, disorder and inconvenience caused by keeping them."

A place in which lottery tickets are offered for sale, or sold or distributed is such a mischief and has therefore been included in the definition of "common gaming houses."

In the present case there is no evidence that the documents found on the premises were "tickets" — there is evidence that some of the documents are counterfoils — and what is more important there is no evidence that lottery tickets were being offered for sale or sold or distributed in the premises in question. The appellant was originally charged with assisting in carrying on 100, 1,000 and 10,000 characters lotteries an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953; but for some reason which is not clear to me this charge was amended to a charge under section 4(1)(b).

For the reasons set out above the appeal must succeed. The order of conviction and sentence must be set aside. The appellant is discharged and acquitted.

The fine, if paid, is to be refunded.

Appeal allowed.

LOW KWONG HENG v. REGINA.

[A. Cr. J. (Spenser Wilkinson J.) August 6, 1954]
[Penang — Criminal Appeal No. 20 of 1954]

Criminal law and Procedure — Criminal trial — Joinder of charges — Charges sufficiently connected by reason of nature of articles to fall within the provisions of Criminal Procedure Code (Cap. 21), s. 175(1).

The accused was originally charged with the possession of raw opium in his car as one charge and the possession of prepared opium in his car as a second charge. To these two charges were added a third charge in respect of utensils found in accused's house and a fourth charge relating to prepared opium found in the house.

Held: in substance there was one act of possession in respect of four different items and the charges were sufficiently connected by reason of the nature of articles to fall within the provisions of s. 175(1) of the Criminal Procedure Code.

CRIMINAL APPEAL.

Nancy Yeap for the appellant.

J. D. Peterkin (Federal Counsel) for the respondent.

The facts appear sufficiently from the judgment below.

Cur. Adv. Vult.

Spenser Wilkinson J. : — The only point in this appeal upon which I had any doubts was the question whether the four charges were properly joined. When the accused's premises were searched certain utensils for use in connection with prepared opium were found in his room, as was also some prepared opium. Behind the panels of the accused's motor car in the garage adjacent to his house were found something over 14 katties of raw opium and about 3 katties of prepared opium. The accused was originally charged with the possession of the raw opium in the car as one charge and the possession of the prepared opium in the car as the second charge. To these two charges were added a third charge in respect of the utensils found in the house and a fourth charge relating to the prepared opium found in the house.

Counsel for the appellant argued that the addition of these charges was wrong and prejudiced the accused.

I have come to the conclusion, however, that the submission of the learned Deputy Public Prosecutor that in substance there was one act of possession in respect of four different items and that the charges were sufficiently connected by reason of the nature of the articles to fall within the provisions of section 175(1) of the Criminal Procedure Code is correct.

That the opium was found in the car somewhat later than the opium and utensils found in the house was purely fortuitous and, had the accused produced the key of the garage when he was asked for it, all these items would have been found at substantially the same time. I think the position was therefore the same as would have arisen if all these different items had been found in different parts of the same house.

[The rest of the judgment is not relevant to this report. *Ed. M.L.J.*].

Appeal dismissed.

Solicitors for the appellant: *Hogan, Adams & Allan.*

K. S. MOHAMED ISMAIL v. CHOO PIN (f).

[A. C. J. (Briggs J.) May 1, 1953]

[Penang — Reference (Rent Assessment Board) No. 1 of 1953]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Ejectment — Tenant receiving rent in excess of that allowed under para (j) — Termination of contractual tenancy — Protection against deprivation of possession.

In this case prior to November 30, 1952 the tenant was receiving from sub-tenants sums in excess of those allowed under para. (j) of s. 13(1) of the Control of Rent Ordinance, but had not since that date received any such sums. The landlord gave notice to determine the contractual tenancy and it was so determined on November 30, 1952. He took proceedings for ejectment under s. 13(1)(j) on March 16, 1953. Counsel for the tenant conceded that if action had been taken immediately on December, 1, 1952 the tenant would have been unable to resist an order for ejectment, but the delay until March 16, 1953 gave the tenant protection.

Held: (1) the protection against deprivation of possession which is ordinarily given by s. 13 does not apply if para. (j) is applicable. Therefore at the moment of the determination of the contractual tenancy, the tenant was not a person protected against deprivation of possession and thus he did not at that moment become a statutory tenant; (2) at the time of the determination of the tenancy it was open to the landlord to take proceedings for ejectment, on the footing of para. (j). The delay could not possibly affect the matter, just as the tenant could have been ejected by action on December 1, 1952, he could be ejected by action taken on March 16, 1953.

Case referred to:—

(1) *Ida Fernandez v. M. Murugiah* (1950) M.L.J. 83.

REFERENCE from the Rent Assessment Board.

I. K. Meek for the applicant.

Tan Cheng Hock for the respondent.

Briggs J. (delivering oral judgment) : —This is a case stated under section 10(1) of the Control of Rent Ordinance, 1948 by the President of the Rent Assessment Board for decision of a question arising from section 13(1)(j) of the Ordinance. The situation is that prior to the 30th November, 1952, the tenant was receiving from the sub-tenant sums in excess of those allowed under paragraph (j), but has not since that date received any such sums. The landlord gave notice to determine the contractual tenancy and it was so determined on the 30th November, 1952. Therefore the wrongful receipt of rents under paragraph (j) and the contractual tenancy terminated at exactly the same period. Under section 15(a) a tenant remaining in possession after the determination of his contractual tenancy by notice does not necessarily become a statutory tenant. He only does so if he cannot by reason of the provisions of the Ordinance be deprived of possession by his landlord. The protection against deprivation of possession which is ordinarily given by section 13 does not apply if paragraph (j) is applicable. Therefore at the moment of the determination of the contractual tenancy, the tenant was not a person protected against deprivation of possession and thus he did not at that moment become a statutory tenant. No doubt it is convenient to refer to him colloquially as a statutory tenant, and it may be convenient so to refer to any person holding over, but not protected, and therefore not a statutory tenant. In the circumstances it is quite clear that at the time of the